

AMENDED IN SENATE APRIL 4, 2006

SENATE BILL

No. 1744

Introduced by Senator Bowen

February 24, 2006

An act to amend ~~Section 1798.29~~ *Sections 1785.11.2, 1798.29, and 1798.82* of the Civil Code, relating to information privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1744, as amended, Bowen. Information privacy.

(1) Existing law regulates the activities of consumer credit reporting agencies and permits a consumer to place a security freeze on his or her consumer report. Existing law establishes procedures for temporarily lifting and for removing these security freezes.

(2) This bill would revise and recast the procedures for temporarily lifting and for removing a security freeze on a consumer credit report. Among other things, the bill would require a consumer credit report agency to establish an electronic contact method for taking requests from consumers to lift or remove security freezes and would require that requests that are made pursuant to this method during business hours, as defined, be effective within 15 minutes, except as specified.

Existing law requires any agency, or a person or business conducting business in California, which owns or licenses computerized data that includes personal information, as defined, to disclose in specified ways, any breach of the security of the data, as defined, to any California resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

The bill would require ~~that~~ an agency or a person or business that has suffered a breach of the security of the system to ~~provide 1 year of~~

~~a credit monitoring service, as defined, without charge offer to pay the fees associated with placing a security freeze on consumer credit reports to each person whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The bill would require specified information to be included in the notice given to California residents pursuant to these provisions and would require a copy of these notices also be provided to the Office of Privacy Protection. The bill would also make technical changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.11.2 of the Civil Code is amended
2 to read:

3 1785.11.2. (a) A consumer may elect to place a security
4 freeze on his or her credit report by making a request in writing
5 by certified mail to a consumer credit reporting agency. "Security
6 freeze" means a notice placed in a consumer's credit report, at
7 the request of the consumer and subject to certain exceptions,
8 that prohibits the consumer credit reporting agency from
9 releasing the consumer's credit report or any information from it
10 without the express authorization of the consumer. If a security
11 freeze is in place, information from a consumer's credit report
12 may not be released to a third party without prior express
13 authorization from the consumer. This subdivision does not
14 prevent a consumer credit reporting agency from advising a third
15 party that a security freeze is in effect with respect to the
16 consumer's credit report.

17 (b) A consumer credit reporting agency shall place a security
18 freeze on a consumer's credit report no later than five business
19 days after receiving a written request from the consumer.

20 (c) The consumer credit reporting agency shall send a written
21 confirmation of the security freeze to the consumer within 10
22 business days and shall provide the consumer with a unique
23 personal identification number or password to be used by the
24 consumer when providing authorization for the release of his or
25 her credit for a specific party or period of time.

(d) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(e) A consumer credit reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report ~~pursuant to that satisfies the requirements of subdivision (d), or a request to remove a security freeze that satisfies the requirements of subdivision (j), shall comply with the request no later than three business days after receiving the request. as follows:~~

(1) Within three business days after the business day on which the consumer's written request to lift the security freeze is received at the postal address established by the consumer credit reporting agency pursuant to subdivision (f).

(2) Within 15 minutes after the consumer's request is received during normal business hours by the consumer credit reporting agency through the electronic contact method or the telephone number established by the consumer credit reporting agency pursuant to subdivision (f). For purposes of this section, normal business hours means 6:00 a.m. to 9:30 p.m., seven days a week.

(3) The failure of a consumer credit reporting agency to respond within a period required by this section is not a violation of this section if that failure is due to an act of God, natural disaster, or other emergency or calamity, reasonable maintenance of any telephone system or electronic contact method for receiving communications from consumers, or the operational failure of that system or method that could not have been prevented or avoided by the exercise of due care or foresight.

~~(f) A consumer credit reporting agency may develop procedures involving the use of telephone, fax, the Internet, or~~

~~other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (d) in an expedited manner. shall develop procedures for receiving and processing a consumer's request to place, temporarily lift, and remove a security freeze. These methods shall include:~~

~~(1) A postal address.~~

~~(2) A toll-free telephone number.~~

~~(3) An electronic contact method selected by the consumer credit reporting agency, which may include the use of fax, the Internet, or other electronic means.~~

(g) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon consumer request, pursuant to subdivision (d) or (j).

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer credit reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this paragraph, the consumer credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze, the consumer credit reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific party or period of time while the freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer credit reporting agency shall remove a security freeze ~~within three business days of~~ upon receiving a request for removal from the consumer, who provides both of the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

1 (2) The unique personal identification number or password
2 provided by the credit reporting agency pursuant to subdivision
3 (c).

4 (k) A consumer credit reporting agency shall require proper
5 identification, as defined in subdivision (c) of Section 1785.15,
6 of the person making a request to place or remove a security
7 freeze.

8 (l) The provisions of this section do not apply to the use of a
9 consumer credit report by any of the following:

10 (1) A person or entity, or a subsidiary, affiliate, or agent of
11 that person or entity, or an assignee of a financial obligation
12 owing by the consumer to that person or entity, or a prospective
13 assignee of a financial obligation owing by the consumer to that
14 person or entity in conjunction with the proposed purchase of the
15 financial obligation, with which the consumer has or had prior to
16 assignment an account or contract, including a demand deposit
17 account, or to whom the consumer issued a negotiable
18 instrument, for the purposes of reviewing the account or
19 collecting the financial obligation owing for the account,
20 contract, or negotiable instrument. For purposes of this
21 paragraph, “reviewing the account” includes activities related to
22 account maintenance, monitoring, credit line increases, and
23 account upgrades and enhancements.

24 (2) A subsidiary, affiliate, agent, assignee, or prospective
25 assignee of a person to whom access has been granted under
26 subdivision (d) of Section 1785.11.2 for purposes of facilitating
27 the extension of credit or other permissible use.

28 (3) Any state or local agency, law enforcement agency, trial
29 court, or private collection agency acting pursuant to a court
30 order, warrant, or subpoena.

31 (4) A child support agency acting pursuant to Chapter 2 of
32 Division 17 of the Family Code or Title IV-D of the Social
33 Security Act (42 U.S.C. et seq.).

34 (5) The State Department of Health Services or its agents or
35 assigns acting to investigate Medi-Cal fraud.

36 (6) The Franchise Tax Board or its agents or assigns acting to
37 investigate or collect delinquent taxes or unpaid court orders or
38 to fulfill any of its other statutory responsibilities.

1 (7) The use of credit information for the purposes of
2 prescreening as provided for by the federal Fair Credit Reporting
3 Act.

4 (8) Any person or entity administering a credit file monitoring
5 subscription service to which the consumer has subscribed.

6 (9) Any person or entity for the purpose of providing a
7 consumer with a copy of his or her credit report upon the
8 consumer's request.

9 (m) This act does not prevent a consumer credit reporting
10 agency from charging a fee of no more than ten dollars (\$10) to a
11 consumer for each freeze, removal of the freeze, or temporary lift
12 of the freeze for a period of time, or a fee of no more than twelve
13 dollars (\$12) for a temporary lift of a freeze for a specific party,
14 regarding access to a consumer credit report, except that a
15 consumer credit reporting agency may not charge a fee to a
16 victim of identity theft who has submitted a valid police report or
17 valid Department of Motor Vehicles investigative report that
18 alleges a violation of Section 530.5 of the Penal Code.

19 ~~SECTION 1.~~

20 *SEC. 2.* Section 1798.29 of the Civil Code, as added by
21 Section 2 of Chapter 1054 of the Statutes of 2002, is amended to
22 read:

23 1798.29. (a) Any agency that owns or licenses computerized
24 data that includes personal information shall disclose any breach
25 of the security of the system following discovery or notification
26 of the breach in the security of the data to any resident of
27 California whose unencrypted personal information was, or is
28 reasonably believed to have been, acquired by an unauthorized
29 person. The disclosure shall be made in the most expedient time
30 possible and without unreasonable delay, consistent with the
31 legitimate needs of law enforcement, as provided in subdivision
32 (c), or any measures necessary to determine the scope of the
33 breach and restore the reasonable integrity of the data system.

34 (b) Any agency that maintains computerized data that includes
35 personal information that the agency does not own shall notify
36 the owner or licensee of the information of any breach of the
37 security of the data immediately following discovery, if the
38 personal information was, or is reasonably believed to have been,
39 acquired by an unauthorized person.

1 (c) The notification required by this section may be delayed if
2 a law enforcement agency determines that the notification will
3 impede a criminal investigation. The notification required by this
4 section shall be made after the law enforcement agency
5 determines that it will not compromise the investigation.

6 (d) *A notice of a breach of the security of the system provided*
7 *to any resident in California pursuant to this section shall*
8 *include all of the following:*

9 (1) *The date the agency provides the notice.*

10 (2) *The date or dates on which the breach of the security of the*
11 *system occurred according to the best information available to*
12 *the agency.*

13 (3) *The elements of personal information that were, or are*
14 *reasonably believed to have been, acquired without*
15 *authorization, provided that this does not preclude the agency*
16 *from providing a uniform notice to all affected residents.*

17 (e) *An agency that has provided a notice of a breach of the*
18 *security of the system to any resident of California, pursuant to*
19 *this section, shall offer to pay all fees associated with placing a*
20 *security freeze on the resident's credit report with each of the*
21 *national consumer credit reporting agencies to each resident*
22 *whose personal information was, or is reasonably believed to*
23 *have been, acquired by an unauthorized person. The resident*
24 *shall have 60 days from the date of notification to accept the*
25 *offer.*

26 (f) *An agency that has provided notice of a breach of the*
27 *security of the system to any resident of California, pursuant to*
28 *this section, shall provide, without unreasonable delay, a copy of*
29 *the notice to the Office of Privacy Protection.*

30 (g) For purposes of this section, ~~“breach section:~~

31 (1) *“Breach of the security of the system” means unauthorized*
32 *acquisition of computerized data that compromises the security,*
33 *confidentiality, or integrity of personal information maintained*
34 *by the agency. Good faith acquisition of personal information by*
35 *an employee or agent of the agency for the purposes of the*
36 *agency is not a breach of the security of the system, provided that*
37 *the personal information is not used or subject to further*
38 *unauthorized disclosure.*

39 ~~(e) For purposes of this section, “personal~~

(2) (A) “*Personal* information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

~~(1)~~

(i) Social security number.

~~(2)~~

(ii) Driver’s license number or California Identification Card number.

~~(3)~~

(iii) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account.

~~(f) For purposes of this section, “personal~~

(B) “*Personal* information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

~~(g) For purposes of this section, “notice” may~~

(h) *Except as provided in subdivision (i), notice shall be provided by one of the following methods:*

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the agency has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the agency’s Web site page, if the agency maintains one.

(C) Notification to major statewide media.

~~(h)~~

(i) Notwithstanding subdivision—~~(g)~~ (h), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal

1 information and is otherwise consistent with the timing
2 requirements of this part shall be deemed to be in compliance
3 with the notification requirements of this section if it notifies
4 subject persons in accordance with its policies in the event of a
5 breach of security of the system.

6 ~~(i) An agency that has suffered a breach of the security of the~~
7 ~~system shall provide one year of a credit monitoring service~~
8 ~~without charge to each person whose personal information was,~~
9 ~~or is reasonably believed to have been, acquired by an~~
10 ~~unauthorized person. For the purposes of this section, “credit~~
11 ~~monitoring service” means a service that allows a consumer~~
12 ~~electronic access to the information in his or her credit report on~~
13 ~~demand and provides regular E-mail notifications of changes to~~
14 ~~the consumer’s credit report.~~

15 ~~SEC. 2.~~

16 *SEC. 3.* Section 1798.82 of the Civil Code, as added by
17 Section 4 of Chapter 1054 of the Statutes of 2002, is amended to
18 read:

19 1798.82. (a) Any person or business that conducts business
20 in California, and that owns or licenses computerized data that
21 includes personal information, shall disclose any breach of the
22 security of the system following discovery or notification of the
23 breach in the security of the data to any resident of California
24 whose unencrypted personal information was, or is reasonably
25 believed to have been, acquired by an unauthorized person. The
26 disclosure shall be made in the most expedient time possible and
27 without unreasonable delay, consistent with the legitimate needs
28 of law enforcement, as provided in subdivision (c), or any
29 measures necessary to determine the scope of the breach and
30 restore the reasonable integrity of the data system.

31 (b) Any person or business that maintains computerized data
32 that includes personal information that the person or business
33 does not own shall notify the owner or licensee of the
34 information of any breach of the security of the data immediately
35 following discovery, if the personal information was, or is
36 reasonably believed to have been, acquired by an unauthorized
37 person.

38 (c) The notification required by this section may be delayed if
39 a law enforcement agency determines that the notification will
40 impede a criminal investigation. The notification required by this

1 section shall be made after the law enforcement agency
2 determines that it will not compromise the investigation.

3 (d) *A notice of a breach of the security of the system provided*
4 *to any resident in California pursuant to this section shall*
5 *include all of the following:*

6 (1) *The date the person or business provides the notice.*

7 (2) *The date or dates on which the breach of the security of the*
8 *system occurred according to the best information available to*
9 *the person or the business.*

10 (3) *The elements of personal information that were, or are*
11 *reasonably believed to have been, acquired without*
12 *authorization, provided that this does not preclude the person or*
13 *business from providing a uniform notice to all affected*
14 *residents.*

15 (e) *A person or business that has provided a notice of a breach*
16 *of the security of the system to any resident of California,*
17 *pursuant to this section, shall offer to pay for all fees associated*
18 *with placing a security freeze on the resident's credit report with*
19 *each of the national consumer credit reporting agencies to each*
20 *resident whose personal information was, or is reasonably*
21 *believed to have been, acquired by an unauthorized person. The*
22 *resident shall have 60 days from the date of notification to accept*
23 *the offer.*

24 (f) *A person or a business that has provided notice of a breach*
25 *of the security of the system to any resident of California,*
26 *pursuant to this section, shall provide, without unreasonable*
27 *delay, a copy of the notice to the Office of Privacy Protection.*

28 (g) For purposes of this section, ~~“breach section:~~

29 (1) *“Breach of the security of the system” means unauthorized*
30 *acquisition of computerized data that compromises the security,*
31 *confidentiality, or integrity of personal information maintained*
32 *by the person or business. Good faith acquisition of personal*
33 *information by an employee or agent of the person or business*
34 *for the purposes of the person or business is not a breach of the*
35 *security of the system, provided that the personal information is*
36 *not used or subject to further unauthorized disclosure.*

37 ~~(e) For purposes of this section, “personal~~

38 (2) (A) *“Personal information” means an individual's first*
39 *name or first initial and last name in combination with any one or*

1 more of the following data elements, when either the name or the
2 data elements are not encrypted:

3 ~~(1)~~

4 (i) Social security number.

5 ~~(2)~~

6 (ii) Driver's license number or California Identification Card
7 number.

8 ~~(3)~~

9 (iii) Account number, credit or debit card number, in
10 combination with any required security code, access code, or
11 password that would permit access to an individual's financial
12 account.

13 ~~(f) For purposes of this section, "personal~~

14 (B) "*Personal* information" does not include publicly
15 available information that is lawfully made available to the
16 general public from federal, state, or local government records.

17 ~~(g) For purposes of this section, "notice" may~~

18 (h) *Except as provided in subdivision (i), notice shall be*
19 *provided by one of the following methods:*

20 (1) Written notice.

21 (2) Electronic notice, if the notice provided is consistent with
22 the provisions regarding electronic records and signatures set
23 forth in Section 7001 of Title 15 of the United States Code.

24 (3) Substitute notice, if the person or business demonstrates
25 that the cost of providing notice would exceed two hundred fifty
26 thousand dollars (\$250,000), or that the affected class of subject
27 persons to be notified exceeds 500,000, or the person or business
28 does not have sufficient contact information. Substitute notice
29 shall consist of all of the following:

30 (A) E-mail notice when the person or business has an e-mail
31 address for the subject persons.

32 (B) Conspicuous posting of the notice on the Web site page of
33 the person or business, if the person or business maintains one.

34 (C) Notification to major statewide media.

35 ~~(h)~~

36 (i) Notwithstanding subdivision ~~(g)~~ (h), a person or business
37 that maintains its own notification procedures as part of an
38 information security policy for the treatment of personal
39 information and is otherwise consistent with the timing
40 requirements of this part, shall be deemed to be in compliance

1 with the notification requirements of this section if the person or
2 business notifies subject persons in accordance with its policies
3 in the event of a breach of security of the system.

4 ~~(i) A person or business that has suffered a breach of the~~
5 ~~security of the system shall provide one year of a credit~~
6 ~~monitoring service without charge to each person whose personal~~
7 ~~information was, or is reasonably believed to have been, acquired~~
8 ~~by an unauthorized person. For the purposes of this section,~~
9 ~~“credit monitoring service” means a service that allows a~~
10 ~~consumer electronic access to the information in his or her credit~~
11 ~~report on demand and provides regular E-mail notifications of~~
12 ~~changes to the consumer’s credit report.~~